

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JONATHAN A. ALLEN,

Plaintiff,

v.

DAN M. WINDER,

Defendant.

Case No. 2:12-cv-00957-MMD-CWH

ORDER

(Def.'s Motion to Dismiss dkt. no. 5)

**I. SUMMARY**

Before the Court is Defendant Dan M. Winder's Motion to Dismiss. (Dkt. no. 5.) Plaintiff has not responded. For the reasons discussed below, the motion is granted.

**II. BACKGROUND**

This is a case arising from breach of contract and alleged attorney malpractice. Plaintiff's complaint alleges the following facts:

Around May 2009, Plaintiff and Defendant entered into a contract whereby Defendant would render legal services to TJ, Inc. to file a Chapter 11 bankruptcy. Plaintiff paid Defendant \$7,000.00 for his services but Defendant did not render services properly. Due to the alleged breach, Plaintiff suffered \$737,114.30 in actual damages. Plaintiff filed suit pro se on June 6, 2012, alleging a single state law claim for breach of contract. Defendant seeks to dismiss the complaint on several grounds. The Court will address dismissal based on lack of subject matter jurisdiction.


### III. DISCUSSION

Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). The plaintiff is the party invoking the court’s jurisdiction and, as a result, the plaintiff bears the burden of proving that the case is properly in federal court. *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). To establish subject matter jurisdiction pursuant to diversity of citizenship, the party asserting jurisdiction must show: (1) complete diversity of citizenship among opposing parties and (2) an amount in controversy exceeding \$75,000. 28 U.S.C. § 1332(a).

Here, Plaintiff fails to establish diversity jurisdiction for the Court to adjudicate his single state law claim. Specifically, Plaintiff’s Complaint alleges that Plaintiff is a citizen of the State of Nevada and Defendant is a corporation organized and existing under Nevada law. As opposing parties are both residents of the State of Nevada, there is no diversity of citizenship. Therefore, this Court does not have jurisdiction to adjudicate this dispute.

IT IS THEREFORE ORDERED that Defendant’s Motion to Dismiss is GRANTED. The Clerk of the Court is ordered to close this case.

DATED THIS 5<sup>th</sup> day of February 2013.

  
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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE